In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 812

MRS. LIBBYLEI GRAVES MCKEWEN, PETITIONER

v.

MRS. MARJORIE L. MCKEWEN AND UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

This case involves a dispute between the petitioner, the mother of a deceased veteran, and respondent, his widow, as to the disposition of the proceeds payable by the Government under a $10,000 policy of life insurance issued to the deceased under the National Service Life Insurance Act. The widow originally filed a claim and received payments thereunder in the amount of

$935.60. Thereafter, the mother filed a claim contending that she was entitled to the proceeds. Since the mother was the last-named beneficiary under the policy and no communication had been received changing the beneficiary, the Veterans Administration held that the mother, and not the widow, was entitled to receive the proceeds of the policy.

Suit for the proceeds of the insurance was brought by the insured's wife against the mother and the Government in the United States District Court for the Southern District of Mississippi. The widow based her claim on an officer's data sheet, a government insurance report form, and a completed form similar to the data sheet filed by the insured upon reporting to his duty station overseas. Answering the complaint, the United States admitted its liability for the payment of $10,000 under the insurance contract, asserted its inability safely to pay the money by reason of the conflicting claims of the widow and mother, requested the court to determine to whom the proceeds of the insurance was due, and asked that it be given credit in any judgment for the amounts that it had theretofore paid to the widow of the deceased.

The district court entered judgment in favor of the widow for the amount of the policy less, however, the sum of $935.60, which had theretofore been paid to the widow. The judgment of the district court was affirmed by the court below. Inas-

much as the determination of the proper beneficiary in this case is essentially a factual one, and the Government has no interest in the controversy other than to pay the insurance admittedly due to the proper beneficiary, the Government in effect occupies the role of a stakeholder and therefore takes no position as to whether the writ of certiorari should issue.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

JUNE 1948.

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